

OCA 87-6079
14 December 1987

MEMORANDUM FOR: AGC/DDO
C/PCS/DDO
C/CTC/DDO
C/EPS ☐ DDO

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FROM: Legislation Division
Office of Congressional Affairs

SUBJECT: H.R. 3651: Anti-terrorism and Arms Export Amendments Act
of 1987

1. Attached for your information is a copy of H.R. 3651, the "Anti-terrorism and Arms Export Amendments Act of 1987." This bill, another part of the legislative "fallout" from the Iran/Contra hearings, has a bipartisan group of sponsors: Representatives Berman, Fascell (Chairman of the House Foreign Affairs Committee), Hamilton and Hyde (Ranking Minority Member - House Permanent Select Committee on Intelligence). To date, there has been no action on the bill; however, it is expected to see action in 1988.

2. Your attention is directed to the following provisions of possible concern to the Agency.

Prohibitions on Arms Transfers

3. Section 2 - Prohibitions on Arms Transactions With "Terrorist" Countries. Subsection (b) of Section 2 of the bill amends the Arms Export Control Act (AECA) to direct the Secretary of State to designate as a "terrorist country" any country which grants terrorists sanctuary from prosecution or repeatedly provides support for terrorist acts. Subsection (a) then prohibits, with respect to such countries, a number of transactions including the provision of any munitions item (subsection (a)(1)(A)) or the participation directly or indirectly in any action to facilitate the acquisition of such an item by such a country (subsection (a)(1)(E)).

4. Other subsections make provision for the promulgation of the Secretary's designations of terrorist countries in the Federal Register and for their rescission after notification to the Congress.

5. Subsection (f) creates an exception to the prohibitions of subsection (a) for transfers for which notice is given in accordance with Section 36(e) of the AECA.

6. Section 36(e) of the AECA does not currently exist: it would be created by Section 8 of the bill. Section 8 provides that no "munitions items" as defined in the AECA may be transferred to a foreign person, government or entity under a Presidential Finding unless the President notifies the intelligence committees in accordance with Section 501 of the National Security Act of 1947.

7. In effect, transactions prohibited by Section 2 would be permissible if conducted as covert actions, and notice is given in accordance with Section 501.

8. We have informally indicated to the Congressional staff that it is possible such transactions could be conducted not only as a covert action, but also as part of a foreign intelligence collection activity. We have therefore suggested they consider expanding the coverage of Section 8 to include such activities. This, in turn, will permit any such future activities to go forward without regard to the prohibitions of Section 2.

Reports to Congress:
Transfers of Defense Articles/Services

9. Section 7 of the bill ("DoD Transfers to Other Agencies") amends Section 36(a) of the AECA to add a new Congressional reporting requirement for intelligence activities.

10. Currently, under Section 36(a), the President must provide detailed reporting to the Speaker of the House and the Chairman of the Senate Foreign Relations Committee of transfers under the AECA.

11. Section 7 would add to that list a requirement to report quarterly transfers of "defense articles or defense services" of \$250,000 or more in value (either singly or by quarter-year totals) by the Department of Defense (DoD) to any other entity within the United States Government.

12. Defense articles and services furnished by the Central Intelligence Agency to a foreign government or other foreign party pursuant to lawfully authorized intelligence activities are in many instances obtained by transfer from DoD. Requiring DoD to report on such transfers is thus a requirement for the Agency to report on the underlying intelligence activity; in effect, "back door" notification to the foreign affairs committees of Agency-intelligence activities. We have advised Congressional staff of this concern as well.

13. We will keep you informed of further developments concerning this bill.

Legislation Division
Office of Congressional Affairs

Attachment as stated

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STAT OCA/Leg/[]slm (18 December 1987)

100TH CONGRESS
1ST SESSION

H. R. 3651

To prohibit exports of military equipment to countries supporting international terrorism, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 18, 1987

Mr. BERMAN (for himself, Mr. FASCELL, Mr. HAMILTON, and Mr. HYDE) introduced the following bill; which was referred to the Committee on Foreign Affairs

A BILL

To prohibit exports of military equipment to countries supporting international terrorism, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Antiterrorism and Arms
5 Export Amendments Act of 1987".

6 **SEC. 2. PROHIBITION ON ARMS TRANSACTIONS WITH COUN-**
7 **TRIES SUPPORTING TERRORISM.**

8 (a) **PROHIBITION.**—Section 40 of the Arms Export
9 Control Act (22 U.S.C. 2780) is amended to read as follows: